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No. 6, Original

In the Supreme Court of the United States

OCTOBER TERM, 1915

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. ——, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MOTION FOR LEAVE TO FILE COMPLAINT

The United States of America, by its Attorney General and its Solicitor General, asks leave of the Court to file its complaint against the State of California submitted herewith.

TOM C. CLARK,
Attorney General.

J. HOWARD MCGRATH,
Solicitor General.

OCTOBER 1945.

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STATEMENT IN SUPPORT OF MOTION

The United States seeks to bring this suit against the State of California under the authority of Article III, Section 2, Clause 2, of the Constitution of the United States. The purpose of the litigation is to establish the rights of the United States in the bed of the Pacific Ocean adjacent to the coast of California beginning at low-water mark and extending seaward for three nautical miles. This suit does not involve any bays, harbors, rivers or other inland waters of California, nor does it involve the so-called tidelands, namely those lands which are covered and uncovered by the daily flux and reflux of the tides. It is limited solely to that portion of the open sea embraced within the three-mile belt, sometimes referred to as the marginal sea.

The question is one of considerable importance. Since 1921, California has, by statute (general law, Chapter 303, Statutes and Amendments of California, 1921, as amended), asserted rights in the lands underlying the Pacific Ocean and has undertaken to provide for the leasing of those lands for the exploitation of petroleum, gas and other mineral deposits. Acting under that law, the State has executed many leases (the lease to Pacific Western Oil Corporation described in paragraph VI of the Complain, *infra,* p. 8, being representative), and the lessees have extracted and are continuing to extract large quantities of petroleum and other minerals from these lands.

The Government contends that the State has never had and does not now have any proprietary interest in these lands or the contents thereof and therefore never has had and does not now have any authority to grant rights to remove petroleum or other minerals therefrom. The leases constitute a challenge to the Government's rights, and the operations thereunder have resulted and will result in great and irreparable damage to the Government unless relief is granted.

The rights of the United States in lands under the marginal sea are based upon substantial grounds, and have never been adjudicated by this Court. The issue is entirely novel, for this case is sharply to be distinguished from those decisions which are thought to hold that the State has proprietary interests in bays, harbors, rivers and other inland waters as well as the so-called tidelands. See *Borax, Ltd.* v. *Los Angeles,* 296 U. S. 10, 15. The crucial consideration underlying those decisions is significantly absent here.

The territory out of which California was created originally belonged to the United States, having been acquired from Mexico. See Treaty of Guadalupe Hidalgo, 9 Stat. 922. Upon admission of California to the Union, the State of course became endowed with all rights and power necessary for state sovereignty. But it did not succeed to any public lands or property of the United States, in the absence of any grant from

Congress. In the case of inland navigable waters (bays, etc.) and the so-called tidelands, however, this Court ruled that since each of the original thirteen states of the Union owned such lands within its borders and since such lands were directly related to state sovereignty, each new state is to be treated as having received such lands within its borders so that all States, old and new, might stand on an equal footing in respect of their local sovereignty. See, e. g., *Pollard* v. *Hagan*, 3 How. 212; *Shively* v. *Bowlby*, 152 U. S. 1.

Whatever may be said of the soundness of the rationale of those cases, they have no application here. This case involves the three-mile belt on the *open sea*, and this Court has never held that title to the bed of the ocean within the three-mile belt is in the individual states. At the time of the formation of the Union the first thirteen states did not own the lands underlying the three-mile belt, and the entire basis of the foregoing decisions, implying a grant to the new states in order to place them on an equal footing with the old, is therefore absent here. As rights in the three-mile belt, susceptible of possession and ownership, began to emerge subsequently, they emerged as property of the national sovereign, whose function it is to establish and vindicate those rights against the possible claims of other nations.

The case is one of great importance. It is respectfully submitted that the motion be granted.[1]

TOM C. CLARK,
Attorney General.
J. HOWARD MCGRATH,
Solicitor General.

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[1] The Government recognizes that the issue could perhaps be litigated more conveniently in a test case involving a small part of the coast, as for example, the area covered by the lease issued to the Pacific Western Oil Corporation (see paragraph VI of the Complaint, *infra*, p. 8). However, there would always be the hazard that the rights of the Government in the entire marginal sea adjacent to California outside the particular leasehold area might later be deemed to have been foreclosed by such a suit on the ground that a single cause of action had been split. Cf. *Barnet* v. *Mayes*, 43 F. 2d 521, 528–529 (C. C. A. 10); *Baird* v. *United States*, 96 U. S. 430, 432. Although the Government thinks that the doctrine against splitting a single cause of action would probably be held inapplicable in such situation (cf. *United States* v. *Pan American Petroleum Co.*, 55 F. 2d 753 (C. C. A. 9), certiorari denied, 287 U. S. 612), it has nevertheless been unwilling to jeopardize substantial rights in the absence of a clear ruling to that effect by this Court. Such ruling might perhaps be included in an order granting this motion, but limiting the suit to the area covered by Pacific Western's lease without prejudice to the rights of the United States elsewhere in the marginal sea.

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. ——, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

COMPLAINT

The United States of America, by its Attorney General and its Solicitor General, brings this suit against the defendant, the State of California, and for its cause of action states:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States.

II

At all times herein material, plaintiff was and now is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and out-

side of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California.

III

The State of California claims some right, title or interest in said lands, minerals and other things of value adverse to the United States.

IV

In the exercise of the rights claimed by it, the State of California has, by general law, Chapter 303, Statutes and Amendments of California, 1921, as amended, authorized the leasing of lands underlying the Pacific Ocean for the exploitation of the petroleum, gas and other mineral deposits in the area in controversy.

V

Pursuant to that law, the State of California has negotiated and executed such leases with many persons and corporations, too numerous to name or to make parties to this action, and many of those persons and corporations have, in violation of the rights of the United States, entered upon the said lands and drilled wells for the recovery of petroleum, gas and other hydrocarbon substances. For a long time past many of those wells have been producing large quantities of petroleum, gas and other hydrocarbon substances

of great value, which the lessees of the State have taken and converted to their own uses and for which the lessees have paid to the State large sums of money in rents and royalties reserved under the leases, but neither the State nor its lessees have recognized the rights and title of the United States nor have they paid to the United States either the value of the petroleum and other things of value taken from the area, or any royalties thereon.

VI

In particular, the Pacific Western Oil Corporation, a corporation organized and existing under the laws of the State of Delaware, now occupies and claims under leases granted by the State of California that certain submerged area in the Pacific Ocean, County of Santa Barbara, State of California, described as follows:

> Beginning at the point where the ordinary high water mark of the Pacific Ocean is intersected by the Easterly side boundary line of the S. M. Spalding Tecolote Ranch Property, which point bears South 0°11′ East 503.92 feet from the Southerly steel end post of the galvanized steel fence on the Easterly side boundary line of the said S. M. Spalding Tecolote Ranch Property, which end post correctly locates the point designated "end of fence" in the Westerly boundary line of Lot "C" as shown on a map entitled "Map of Catherine M. Bell

Property near Elwood Station, Santa Barbara County, California", by O. H. O'Neill, Licensed Surveyor, June, 1918, filed July 21, 1919, in Book Twelve, Page 39, Records of Santa Barbara County; thence South 37°31′ West 4021.35 feet to the true point of beginning; thence North 55°22′ West 1528.99 feet; thence North 36°23′ East 3641.35 feet, more or less, to the mean low water line of the Pacific Ocean, which point is South 36°23′ West 380 feet, more or less, from a point on the ordinary high water mark of the Pacific Ocean; thence following said mean low water line of the Pacific Ocean North 86°52′40″ East 123 feet; thence South 40°27′ East 100 feet; thence South 68°16′ East 104 feet; thence South 57°02′ East 1312 feet to a point which is South 37°31′ West 266 feet from a point on the ordinary high water mark of the Pacific Ocean; thence leaving said mean low water line South 37°31′ West 3755.35 feet to the point of beginning, containing 133.891 acres, more or less.

All of said land lying below the line of mesne low tide is situated within the area in controversy. The Pacific Western Oil Corporation, under the claim of right based on the said leases, is now and for a long time past has been producing petroleum of great value in large quantities from that part of the lands situated within the area in controversy and is converting the petroleum to its own uses and paying the State rents and roy-

alties under the leases. The United States has made demand upon the Pacific Western Oil Corporation for the surrender of possession of the said lands within the area in controversy and has made demand that the Pacific Western Oil Corporation discontinue the extraction and removal of petroleum and other minerals from the said land, but despite the demands, the Pacific Western Oil Corporation has failed and refused to do so.

VII

The State of California has no title to or interest in any of the lands in controversy but possesses only those governmental powers which it has with respect to other lands of the United States within the territorial jurisdiction of the State.

VIII

The State has frequently and publicly denied the rights, powers and title of the United States in the area and has claimed fee simple title to the area for itself and, unless the rights of the United States are established and declared by this Court, the State will continue to claim such title for itself and to exercise the rights incident to such title through its officers, agents and employees, and will continue to aid, abet and encourage others, as its lessees, to trespass upon and to take and use the minerals and other things of value in the area, in violation of the rights of the United States, from

which the United States will suffer irreparable injury, for which it has no adequate remedy except by this action.

Wherefore, plaintiff prays that a decree be entered adjudging and declaring the rights of the United States as against the State of California in the area claimed by California and enjoining the State of California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States.

TOM C. CLARK,
Attorney General.

J. HOWARD MCGRATH,
Solicitor General.

OCTOBER 1945.

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